



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/759,770

01/12/2001

Albert Young

3COM-3348.WHD.US.P

9656

7590

01/25/2005

WAGNER, MURABITO & HAO LLP

Third Floor

Two North Market Street

San Jose, CA 95113

EXAMINER

NGUYEN, BRIAN D

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/759,770

Applicant(s)

YOUNG ET AL.

Examiner

Brian D Nguyen

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-19 is/are allowed.
- 6) ☒ Claim(s) 1-6, 10, 20-26 and 30 is/are rejected.
- 7) ☒ Claim(s) 7-9 and 27-29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The indicated allowability of claims 1-6, 10, 21-26, and 30 are withdrawn in view of the newly discovered reference(s) to Seppala (6,747,968). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 10, 20, and 28-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 30 recite the limitation "the overall traffic rate" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 20 recites the limitation "the overall traffic rate" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 28 recites the limitation "said point coordinator" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2661

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 5-6, 10, 21, 25-26, and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Seppala et al (6,747,968).

Regarding claim 1, Seppala discloses, in a communication network (WLAN) including an access point (14) and a plurality of stations (12), a method of accessing the communication network, the access point and the plurality of stations operating under a distributed coordination function (DCF) access mechanism as a default access mechanism, comprising steps of: automatically monitoring load conditions over the communication network (see col. 2, lines 56-67; col. 4, lines 41-49; and col. 5, lines 43-60 where traffic is monitored); automatically analyzing the load conditions to determine which access mechanism, the DCF access mechanism or a point coordination function (PCF) access mechanism, is most appropriate for the load conditions (see col. 2, lines 56-67 and col. 5, lines 43-60 where different data are placed in different queues and col. 2, lines 13-16 where DCF may be used for Best Effort traffic delivery and PCF may be used for Real Time traffic delivery); dynamically enabling the PCF access mechanism when the PCF access mechanism is most appropriate for the load conditions; and dynamically disabling the PCF access mechanism when the DCF access mechanism is most appropriate for the load conditions (see col. 2, lines 13-16 where DCF and PCF are coexisted. Note that when one mechanism is enabled, the other must be disabled).

Regarding claims 5-6, Seppala discloses a point coordinator and the use of the IEEE 802.11 protocol (see col. 1, lines 34-36 and 59-60).

Art Unit: 2661

Regarding claim 10, Seppala discloses factors at least comprising the overall traffic rate (an amount of bandwidth consumed by at least one WLAN terminal) and the destination of the data frames located at the access point (an amount of real time traffic destined from or to at least one WLAN terminal) (see col. 2, lines 56-67).

Regarding claims 21, 25-26, and 30, claims 21, 25-26, and 30 have substantially the same limitations as the respective method claims 1, 5-6, and 10. Therefore, they are subject to the same rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-4 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seppala (6,747,968).

Regarding claims 2-4, Seppala does not specifically disclose monitoring and analyzing are implemented continually, periodically, or asynchronously. However, to monitor and analyze the load condition in any of the well-known ways is a matter of choice. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to continually, periodically, or asynchronously monitor and analyze the load condition in order to meet a particular application.

Art Unit: 2661

Regarding claims 22-24, claims 22-24 have substantially the same limitations as the respective method claims 12-4. Therefore, they are subject to the same rejection.

Allowable Subject Matter

8. Claims 11-19 are allowed.
9. Claims 7-9 and 27-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. Claim 20 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

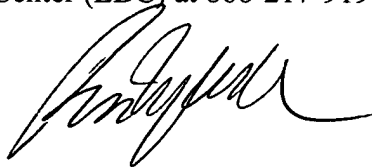
Fogle (6,813,260) and Agrawal et al (6,721,331).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (571) 272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on (571) 272-3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2661

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BRIAN NGUYEN
PRIMARY EXAMINER

1/20/05